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In re Application of :
CNOSAR, Daniel M., et al. :
U.S. Application No.: 09/554,708 :
ET No.: PCT/US99/16669 :
International Filing Date: 22 July 1999 :
Priority Date: 24 July 1998 :
Attorney's Docket No.: LIT-PI-499 :
For: A PROCESS FOR PROCESSING :
BIODIESEL, LUBRICANTS, AND FUEL :
AND LUBRICANT ADDITIVES IN A :
CRITICAL FLUID MEDIUM :

DECISION ON
PETITION FOR REVIVAL

This decision is issued in response to the "Petition For Revival" filed on 13 April 2000. Applicant has provided authorization to charge Deposit Account No. 05-0565 for the required petition fee.

BACKGROUND

On 22 July 1999, applicants filed international application PCT/US99/16669 which claimed a priority date of 24 July 1998 and which designated the United States.

A Demand was not filed with the International Preliminary Examining Authority electing the United States prior to the expiration of 19 months from the priority date. As a result, the deadline for submission of a copy of the international application (unless previously communicated by the International Bureau) and payment of the basic national fee was 20 months from the priority date, i.e., 24 March 2000.

On 13 April 2000, applicants filed the present Petition For Revival. The Petition was accompanied by: (1) a New Application Transmittal letter; (2) a copy of a specification entitled "Process For Producing Biodiesel Lubricants, And Fuel And Lubricant Additives In A Critical Fluid Medium;" (3) a Combined Declaration And Power Of Attorney; and (4) an Assignment.

DISCUSSION

37 CFR 1.137(b) permits the filing of a petition to revive an abandoned application where the abandonment resulted from an unintentional delay. A grantable petition under this section must include: (1) the required reply, unless previously filed; (2) the petition fee required by law; (3) a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional;" and (4) any terminal disclaimer and fee required pursuant to 37 CFR 1.137(c).

Regarding item (1), the "required reply," section 711.03(c), page 700-93 of the Manual of Patent Examining Procedures states that:

[g]enerally, the required reply is the reply sufficient to have avoided abandonment, had such reply been timely filed.

Here, the international application was filed with the United States Receiving Office, so applicants are not required to submit a copy of the international application with the national stage application. Thus, the "required reply" is a payment of the basic national fee. The appropriate basic national fee for this application is \$690. The papers filed with the Petition For Revival include an authorization to charge Deposit Account 05-0565 for the basic national fee. Thus, applicants have made a submission which would have been "sufficient to have avoided abandonment" had it been made in a timely manner, that is, on or before 24 March 2000. Accordingly, applicants have submitted the "required reply." Item (1) is satisfied.

Item (2) is the petition fee required under 37 CFR 1.17(m). The Petition for Revival provided authorization to charge Deposit Account No.05-0565 for the petition fee. Item (2) is satisfied.

As for item (3), the Petition for Revival expressly states that:

The entire delay in filing the subject United States national patent application within 20 months of the priority date, based upon corresponding PCT application S/N: PCT/US99/16669 for which the PCT Demand was not filed, until the filing of a grantable petition was unintentional.

The statement in the Petition for Revival is construed as being the statement required by 37 CFR 1.137(b)(3), that is, a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional." Applicants **must** notify this Office if this is **not** a correct interpretation of these statements. Based on this interpretation of the statements contained in the Petition to Revive, item (3) under 37 CFR 1.137(b) is satisfied.

Under the terms of 37 CFR 1.137(c), the terminal disclaimer listed as item (4) above is required for this application. Applicants have therefore satisfied all the requirements for a patentable petition under 37 CFR 1.137(b). The Petition for Revival is granted.

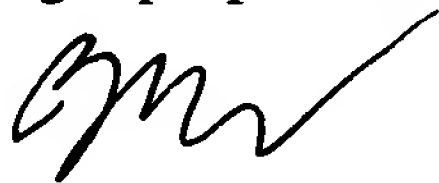
Deposit Account 05-0565 has also been charged \$130 as the surcharge for filing the declaration of inventors more than 20 months after the priority date. In addition, it is noted that the copy of the application submitted with the Petition for Revival is not identical to the published international application. As a result, the copy of the application submitted with the petition for Revival cannot be accepted. If applicants seek to modify the international application for the national stage, they must submit any desired changes in the form of a preliminary amendment or a substitute specification pursuant to 37 CFR 1.125

The declaration submitted is also unacceptable, because it refers only to the "attached specification" which, as noted above, is itself unacceptable (the declaration contains no specific reference to PCT/US99/16669). The declaration therefore does not identify the specification corresponding to the international application, as required by 37 CFR 1.497(a)(2).

CONCLUSION

Applicants' Petition For Revival is **GRANTED**.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations for further processing in accord with this decision, including the issuance of a Notification Of Missing Requirements (Form PCT/DO/EO/905) requiring the submission of a declaration which complies with 37 CFR 1.497(a) and (b) and the payment of the surcharge for filing a proper declaration later than 20 months from the priority date.



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